

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Revocation of the Licenses of
Veronica Hammond for Family
Day Care and Family Foster Care

**RECOMMENDED ORDER
FOR SUMMARY DISPOSITION**

The above-entitled matter is pending before the undersigned Administrative Law Judge (ALJ) pursuant to a Motion for Summary Disposition and Memorandum in Support of Motion for Summary Disposition filed by counsel for the Department of Human Services (Department, DHS). The Department is represented by Assistant County Attorney Vicki Vial-Taylor, 525 Portland Avenue, 12th Floor, Minneapolis, Minnesota 55415. Veronica Hammond (Licensee, Respondent), 3342 Dupont Avenue North, Minneapolis, Minnesota 55412, contacted the ALJ by telephone regarding a response to the Department's motion. The ALJ extended Respondent's final filing deadline for a response to September 12, 2002. The record on the Department's motion closed on that date.

The basis of the Department's Motion is that the Licensee received a disqualification that has become final and is not subject to review in a contested case proceeding. DHS maintains that Minn. Rule 9545.0090 precludes issuance of a family foster care license to Respondent due to the disqualification. DHS asserts that issuance of day care license to Respondent is prohibited by Minn. Rule 9502.0335, subp. 6D. The Licensee made no specific response to the Department's motion. The substance of the Licensee's response to the Notice of and Order for Hearing is that she did not commit the maltreatment that resulted in disqualification.^[1] The Licensee's letter expressly identified the disqualification as the substance of her challenge to the revocation of her licenses.^[2]

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after review of the record and may adopt, reject, or modify the Recommendation contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded each party adversely affected to file exceptions and to present argument to the Commissioner. The parties should contact the Office of the Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155; telephone 651-296-2701, to ascertain the procedure for filing exceptions and presenting argument.

Based on all the proceedings herein, and for the reasons set forth in the accompanying Memorandum, there is no genuine issue of material fact in this proceeding and the Department is entitled to summary disposition as a matter of law. Accordingly:

IT IS RECOMMENDED that the Commissioner of the Department of Human Services order that the Department's Motion for Summary Disposition be GRANTED and that the REVOCATION of the licenses of Veronica Hammond for Family Day Care and Family Foster Care be AFFIRMED.

Dated this 11th day of October 2002.

RICHARD C. LUIS
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department of Human Services is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The underlying issue is whether summary disposition should be granted because the Office of Administrative Hearings has no jurisdiction to consider the issues that form the basis of the family day care and family foster care license disqualification/revocation.

Minnesota law requires the Department to disqualify any person from further contact with foster care clients in a licensed program if a preponderance of the evidence indicates the individual has committed maltreatment.^[3] Disqualification is a basis for license revocation.^[4]

During the time period relevant here, the Legislature limited the involvement of the Office of Administrative Hearings in disqualification determinations, substituting instead a fair hearing process within the Department of Health. Minn. Stat. § 245A.04, subd. 3b(e) (2002) requires that persons appealing the Commissioner's reconsideration "request a fair hearing under section 256.045" and, describes the effect of the final decision of such appeals as follows:

Except as provided under subdivision 3c, the commissioner's final order for an individual under this paragraph is conclusive on the issue of maltreatment and disqualification, including for purposes of subsequent studies conducted under subdivision 3, and is the only administrative appeal of the final agency determination, specifically, including a challenge to the accuracy and completeness of data under section § 13.04.

After receiving notice of the disqualification, the Licensee requested reconsideration pursuant to Minn. Stat. § 245A.04, subd. 3b. The commissioner affirmed the disqualification. At that time, the Licensee was instructed that the Department's affirmation of the disqualification was subject to further review only through a "fair hearing under Minnesota Statutes, section 256.045."^[5] The Licensee did not request a fair hearing and her right to do so expired.

Under applicable Minnesota law, the Administrative Law Judge is bound by the Commissioner's earlier decision, and the law does not allow the ALJ to hear evidence and come to a different conclusion. The ALJ must accept the facts that form the basis of the disqualification and the disqualification itself. The Licensee's right to contest the Commissioner's decision on reconsideration could have been appealed using the fair hearing process, a route not taken in this case.

Although the Licensing Act was amended in 2001 to allow for consolidating disqualification and negative licensing actions beginning in January 2002, those Amendments are inapplicable here. The Licensee's disqualification and expiration of the right to request a fair hearing on that disqualification occurred before the effective date of the Amendments.

The facts that form the basis for the disqualification are primarily the same facts upon which the license revocation was based. The disqualification itself is provided as a basis for the license revocation. Because the ALJ has no jurisdiction to consider the disqualification or hear evidence disputing the facts leading to the determination, it must be concluded that there are no material facts that are disputable here. The undisputable facts and disqualification determinations provide sufficient grounds for license revocation, so the Department is entitled to judgment as a matter of law. The Licensee's defense in this matter, specifically that the allegation of maltreatment is a false charge, is beyond the jurisdiction of this contested case proceeding.^[6] The Department is entitled to summary disposition in this matter.

R.C.L.

^[1] Licensee Letter, May 28, 2002.

^[2] *Id.*

^[3] Minn. Stat. § 245A.04, subd. 3(d)(4).

^[4] Minn. R. 9543.0100, subp.3B (disqualification is grounds for recommending license revocation); 9545.0020, subp. 14 (inability to comply with foster care rules shall be cause for revocation); and 9543.1060, subp. 4C (substantiated abuse or maltreatment is grounds for license revocation). An agency investigation substantiated by a preponderance of the evidence that the Licensee committed an act of serious maltreatment. DHS Exhibits 2 and 3.

^[5] DHS Exhibit 3.

^[6] Licensee did not exercise her right to challenge the initial determination of maltreatment. Licensee was notified of her appeal right at the time that the initial determination of maltreatment was made. Taylor Letter August 29, 2002, Attachment.